

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.17876 of 2008
and MP.No.3 of 2008

- 1.K.Rayappan (Deceased)
- 2.R.Subramanian
- 3.K.Veluchamy
- 4.P.Banumathi
- 5.Sarojini

...Petitioners

(P4 and P5 are substituted as LRS of the deceased
P1 vide order dated 13.06.2019 made in W.M.P.No.16120
of 2019 in W.P.No.17876 of 2008 by MDIJ)

vs.

- 1.Union of India
rep.by its Secretary,
Department of Shipping, Road and Highways,
New Delhi.
2. The Authorised Officer (NH 67)-cum-District Revenue Officer
Collectorate Complex,
Coimbatore.
3. The Project Director,
National Highway Authority of India,
No.6, 3rd Main Road, Pon Nagar,
Tiruchi.

सत्यमेव जयते ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to quash the notification of the 1st respondent made in Na.Ka.No.28943/2006/F7 dated 21.11.2007 as published in the Coimbatore Edition of the newspaper the Daily Thanthi, dated 27.11.2007 and the consequent declaration made in Na.Ka.No.28943/2006/U7 dated 09.07.2008 as published in the Coimbatore Edition of the newspaper the Daily Thanthi dated 16.07.2008, in so far as the lands belonging to the petitioners are concerned situated at S.Nos.22/1-A and 22/1-B, Kangeyampalayam Village, Tiruppur Taluk, Coimbatore District, after calling for the records and perusing the same.

For Petitioners: Mr.A.E.Ravi Chandran

For Respondents: Mr.M.Elumalai
Government Advocate for R2.
Mr.R.Chand Wilson for R1 & R3.

O R D E R

This writ petition has been filed for issuance of a writ of Certiorari, to quash the notification of the 1st respondent made in Na.Ka.No.28943/2006/F7 dated 21.11.2007 as published in the Coimbatore Edition of the newspaper the Daily Thanthi, dated 27.11.2007 and the consequent declaration made in Na.Ka.No.28943/2006/U7 dated 09.07.2008 as published in the Coimbatore Edition of the newspaper the Daily Thanthi dated 16.07.2008, in so far as the lands belonging to the petitioners are concerned situated at S.Nos.22/1-A and 22/1-B, Kangeyampalayam Village, Tiruppur Taluk, Coimbatore District, after calling for the records and perusing the same.

2. The case of the petitioners is that the 1st and 2nd petitioner are the owners of the property situated at S.No.22/1-A, measuring an extent of 7 ½ cents at Kangeyampalayam Tiruppur Taluk, Coimbatore District, wherein both of us are having house and agricultural lands. The 3rd petitioner is the owner of the property situated at No.22/1-B, measuring an extent of 1.90 Acres at Kangeyampalayam Village, Tiruppur Taluk, Coimbatore District. The 3rd petitioner is the co-owner of the above said property.

3. The 1st respondent issued a notification in Na.Ka.No.28943/2006/F7 dated 21.11.2007 and published in the Daily Thanthi, Coimbatore on 27.11.2007, exercising his power under Section 3-A(1) of the National Highways Act, 1956 [hereinafter referred to as "Act"], whereby large tracts of land were proposed to be acquired for the purpose of laying a four lane road at NH 67. In the said notification 21 days time was given to the petitioners to give their objections to the 2nd respondent herein. The petitioners gave their objections on 11.12.2007, in person, to the 2nd respondent and also sent the same by R.P.A.D, acknowledged by the 2nd respondent on 13.12.2007. On receipt of the said objections, the 2nd respondent issued a notice dated 28.12.2007, wherein they were informed that the enquiry under Section 3-C(2) of the Act is fixed on 10.01.2008 at 11.00 a.m.

4. On 10.01.2008, all the petitioners were represented by their counsel submitted the objections before the 2nd respondent.

Even on the said day, no site plan was furnished to the counsel for the petitioners and at the time of enquiry, it was clearly established by the petitioners that there is no need to acquire their properties since the four lane road can be easily laid by utilizing the Government land which was available on both sides of the road.

5. The petitioners gave a further representation to the 2nd respondent on 14.3.2008 requesting him to inform them about the result of the enquiry conducted by him. But without passing any order under Section 3-C(2), a declaration of acquisition under Section 3-D of the Act was published in the Daily Thanthi, Coimbatore on 16.07.2008 wherein the 1st respondent has declared the acquisition of the property for the purpose mentioned in the Notification under Section 3-A(1) and had given a public notice inviting claims for payment of compensation. Aggrieved by the same, the present writ petition is filed.

6. The learned counsel for the petitioners would submit that the very same issue is already covered by the Division Bench of this Court reported in 2010(6) CTC 337 (R.Natarajan vs.The Union of India, rep. By its Secretary, Ministry of Shipping, Road Transport & Highways, Government of India, No.10, Raisina Road, New Delhi-110 001), the relevant paragraph Nos.22 and 23 are extracted hereunder:

"22. After having gone through the entire facts of the case and giving our anxious consideration in the matter, we are of the considered view that the objections filed by the appellants have not been considered in its right perspective and has not been disposed of by giving reasons as contemplated under Section 3-C(2) of the Act. Moreover, admittedly, the copy of the order was neither served nor was communicated to the appellants. The learned Single Judge, therefore, failed to consider this aspect of the matter.

23. For the reasons aforesaid, these appeals and the writ petition are allowed. The impugned order passed by the learned Single Judge is set aside. Consequently, the order passed by the Competent Authority under Section 3-C (2) of the Act and the consequential orders are quashed. The matter is remitted back to the competent authority of the respondent to consider the objections filed by the appellants under Section 3-C(2) of the Act, and the competent authority is directed to dispose of the same in accordance with law by passing a reasoned order. Needless to say that after complying with the requirements of law, the respondents shall proceed in the matter. "

7. The objections filed by the petitioners have not been considered in its right perspective and has not been disposed of, by giving reasons as contemplated under Section 3-C(2) of the Act.

8. But, in the present case, the petitioners objections were not considered in a perspective manner and the order under Section 3-C(2) was not communicated to the petitioners.

9. The learned counsel for the respondents would submit that though the opportunity was given to the petitioners to appear before the 2nd respondent for enquiry as well as the written objections, all the petitioners were represented by their learned counsel, submitted their objections before the 2nd respondent and that the objections were duly considered by the 2nd respondent and passed appropriate orders. However, according to the petitioners, the said order was not communicated to them.

10. Considering the facts and circumstances of the case, though the objections were received by the competent authority from the petitioners, by way of written objections through counsel, however, the same was considered in its right perspective and the consequent order was not communicated to the petitioner.

11. In view of the above, the decision referred above squarely applied in the present case on hand. Accordingly, the writ petition is allowed. The order passed by the 1st respondent made in Na.Ka.No.28943/2006/F7 dated 21.11.2007 as published in the Coimbatore Edition of the newspaper the Daily Thanthi, dated 27.11.2007 and the consequent declaration made in Na.Ka.No.28943/2006/U7 dated 09.07.2008 as published in the Coimbatore Edition of the newspaper the Daily Thanthi dated 16.07.2008 are quashed. In so far as the petitioners are concerned, the matter is remitted back to the competent Authority of the respondents to consider the objections filed by the petitioner under Section 3-C(2) of the Act, and pass appropriate orders on merits and in accordance with law, by passing a reasoned order and communicated the same to the petitioners.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

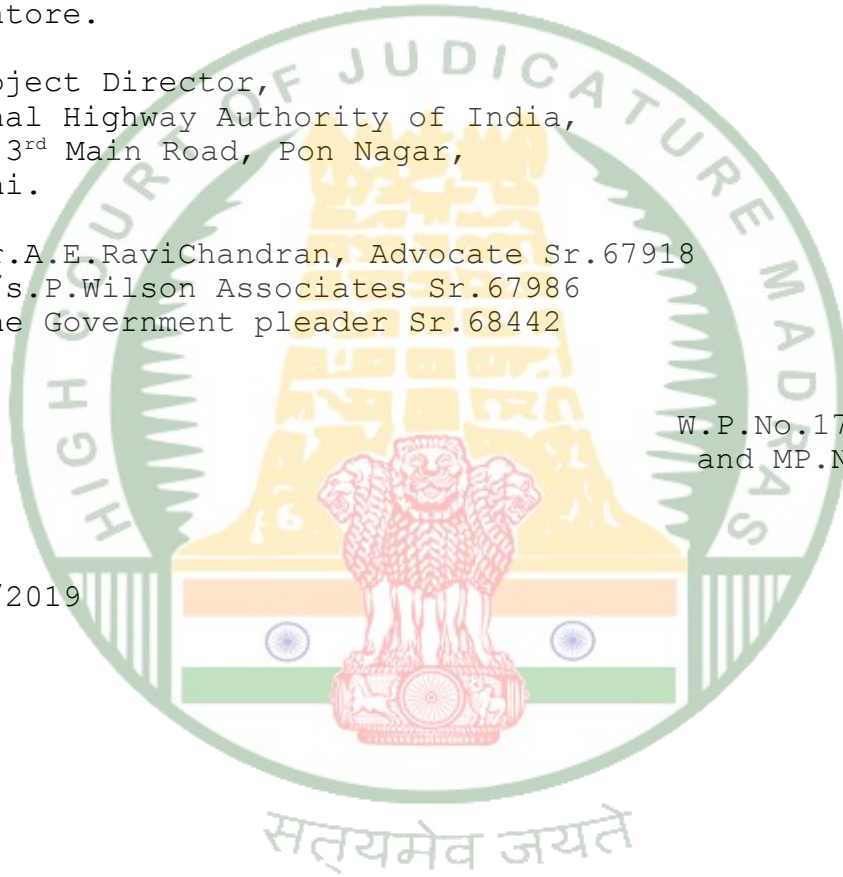
To

1. Union of India
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No.6, 3rd Main Road, Pon Nagar,
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+1cc to Mr.A.E.RaviChandran, Advocate Sr.67918
+1cc to M/s.P.Wilson Associates Sr.67986
+1cc to the Government pleader Sr.68442

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